

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DARRYL WHITTINGTON,	:	
	:	
Petitioner,	:	Civ. No. 23-1310 (RBK)
	:	
v.	:	
	:	MEMORANDUM & ORDER
STEVIE M. KNIGHT, et al.,	:	
	:	
Respondent.	:	
	:	

Petitioner is a federal prisoner currently incarcerated at F.C.I. Fort Dix, in Fort Dix, New Jersey. He is proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner names as Respondents the Warden at F.C.I. Fort Dix, Stevie M. Knight, as well as Jose Cuevas, II – Correctional Counselor. The sole proper respondent in a habeas action though is the person who has custody over the petitioner. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004). In this case, that is Warden Knight not Counselor Cuevas, II. Thus, Petitioner’s habeas claims against Cuevas shall be dismissed with prejudice.

In accordance with Rule 4 of the Rules Governing Section 2254 Cases, applicable to § 2241 cases through Rule 1(b) of the Rules Governing Section 2254 Cases, this Court has screened the petition for dismissal and determined that dismissal without an answer and the record is not warranted.

Accordingly, IT IS on this 3rd day of April, 2023,

ORDERED that Petitioner’s habeas claims against Respondent Cuevas II, are dismissed with prejudice as he is not the proper respondent in this action; the Clerk shall mark Respondent Cuevas II as terminated from the caption in this case; and it is further

ORDERED that the Clerk shall serve a copy of the habeas petition (ECF 1, 1-1, 1-2, 1-3 & 1-4) and this memorandum and order on Respondent Knight by regular U.S. mail, with all costs of service advanced by the United States; and it is further

ORDERED that the Clerk shall forward a copy of the habeas petition (ECF 1, 1-1, 1-2, 1-3 & 1-4) and this memorandum and order to the Chief, Civil Division, United States Attorney's Office, at the following email address: USANJ-HabeasCases@usdoj.gov; and it is further

ORDERED that within forty-five (45) days of the date of the entry of this memorandum and order, Respondent Knight shall file and serve a response which responds to the allegations and grounds in the habeas petition and which includes all affirmative defenses Respondent Knight seek to invoke; and it is further

ORDERED that Respondent Knight shall file and serve with the response certified copies of all documents necessary to resolve Petitioner's claims and affirmative defenses; and it is further

ORDERED that within forty-five (45) days of receipt of the response, Petitioner may file a reply to the answer; and it is further

ORDERED that within seven (7) days of Petitioner's release, be it parole or otherwise, Respondent Knight shall electronically file a written notice of the same with the Clerk; and it is further

ORDERED that the Clerk shall serve this memorandum order on Petitioner by regular U.S. mail.

s/ Robert B. Kugler
ROBERT B. KUGLER
United States District Judge